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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,373	04/02/2004	David B. Cameron	4623C-000087	2562

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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/817,373

Applicant(s)

CAMERON ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25, 26, 28, 29 and 36-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25, 26, 28, 29, 36-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 13, 2007 has been entered.

2. Claims 39, 45 and 51 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 39 recites "the second open end is rotatable with respect to the first end about a generally vertical axis". Claims 45 and 51 recite similar subject matter. This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter.

Applicant's argue at pages 10-11 of the response filed February 13, 2007 that paragraphs 0053 and 0055, and Figs. 3, 5 and 6, of the instant specification disclose the claimed subject matter. The examiner can not agree. As was explained to

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applicants' representative in a telephone conversation prior to filing the instant RCE, end 90 of spout 82 can not rotate with respect (relative) to end 84 about the VERTICAL axis 86. As clearly illustrated in Fig. 6, end 90 rotates with respect (relative) to end 84 about the HORIZONTAL axis 94 (as recited in claim 36). The substance of the claim language is not found in the specification as argued.

3. Claims 25, 26, 28, 29, 36, 39, 41, 42, 45, 47 and 48 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for spout ends rotatable via first and second components, does not reasonably provide enablement for only relative rotation. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Applicant's did not substantively address this rejection in the response.

4. Claim 28 apparently should depend from claim 39 rather than claim 36.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25, 26 and 36-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sargent et al. and Link.

The Sargent et al. (Sargent) reference discloses a system comprising: a toilet 162 including a flush tank 170; a source of flush water (col. 11 lns. 61-62); a spout 220 including a first end 658, a second end 654, a first component 650, and a second component 670; a cap 656; and a bench 106. Re claim 39, the second end 654 is "rotatable with respect to" the first end (Fig. 43) in the same sense as with applicant's disclosed invention. Therefore, Sargent teaches all claimed elements except for the relative rotation of the spout first and second ends about a horizontal axis.

Although the first and second ends of the Sargent spout are not relatively rotatable about a horizontal axis, as claimed, attention is directed to the Link reference which discloses an

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analogous spout which further includes a first end 8 rotatable relative to a second end 11 about a horizontal axis (pg. 1 lns. 63-65). Therefore, in consideration of Link, it would have been obvious to one of ordinary skill in the spout art to associate relative rotatability about a horizontal axis with the spout ends of Sargent in order to facilitate draining of liquid.

Applicant's did not substantively address this rejection in the response.

7. Claims 28 and 29, when considered dependent on claim 39, are free of the prior art of record.

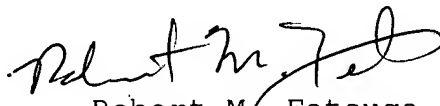
8. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114.

Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.


Robert M. Fetsuga
Primary Examiner
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